

STATE OF MICHIGAN
COURT OF APPEALS

In re WHITEHAIR/WHITE, Minors.

UNPUBLISHED
December 9, 2014

No. 322474
Tuscola Circuit Court
Family Division
LC No. 12-010400-NA

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals by right an order of the trial court terminating her parental rights to her minor daughter, AW,¹ under MCL 712A.19b(3)(c)(i) (conditions that led to the initial adjudication have not been rectified).² We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Respondent is the biological mother of three children, SW, ZW, and AW. On November 20, 2012, petitioner filed a petition to remove all three children from respondent's home, alleging abuse and neglect. Respondent was already working with Department of Human Services (DHS) service providers at the time; in fact respondent had been involved with CPS and provided services for at least ten years. The petition was filed after a worker, Jamie Erskine, conducted an investigation and concluded that respondent had caused mental injury to all of her children and had physically abused ZW. Erskine consulted with respondent's mental health service providers and observed respondent using derogatory language toward ZW. Erskine observed respondent telling ZW that she wanted him to go live with his father because she could not handle him. Respondent also left a voice message for Erskine saying that she was not longer able to care for the children. Based on these conversations and observations, Erskine determined that there was a substantial risk of harm to the children's mental, physical, and emotional well-

¹ The court earlier terminated AW's father's parental rights. His parental rights are not at issue in this appeal.

² The petition also alleged that grounds to terminate existed under MCL 712A.19b(3)(c)(ii) (other conditions exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm). The trial court's conclusions of law only addressed MCL 712A.19b(3)(c)(i).

being. The trial court held a preliminary hearing the next day, and found probable cause that one or more of the allegations in the petition were true. The court authorized the petition and ordered petitioner to schedule supervised parenting time with respondent and the children at its discretion until further order of the court. At the time the children were removed, many different services were already being provided to the family, including parenting classes through Tuscola Behavioral Health Systems (TBHS), Building Strong Families, Families Together Building Solutions, and Big Brothers, Big Sisters.

Just prior to the removal, respondent learned that AW's biological father, had sexually abused SW. Respondent called the police, and AW's father was arrested and convicted of first-degree criminal sexual conduct.

On October 2, 2012, respondent entered a plea of no contest to the allegations in the petition that her parenting techniques had caused mental or emotional injury to her children. The court entered an order of adjudication on the same day.

The court held a dispositional review hearing on December 7, 2012. Petitioner reported that the children were doing well in foster care and that petitioner had made contact with ZW's and SW's father. Petitioner also reported that respondent was making "minimal progress" with parenting skills, and that parenting time visits had been "fraught with emotional issues." The children had developmental issues, and there was a great deal of "animosity" between respondent and SW; additionally, respondent had told SW and ZW that she no longer wanted them around. Petitioner recommended that respondent continue parenting classes and that parenting time remain supervised. The court agreed and entered an order of disposition to that effect.

At a review hearing on February 13, 2013, DHS caseworker Aaron Dorland recommended that supervised parenting time continue between respondent and AW, but that respondent's parenting time with ZW and SW be suspended. Dorland made this recommendation because, since November 2012, respondent had had only had one visit with ZW and SW, who had repeatedly told Dorland they did not want to visit with their mother. Dorland reported that immediately following her visit with respondent on January 31, 2013, SW began exhibiting signs of emotional disturbance, including yelling, slamming doors, and trashing her room. Dorland reported that both older children were doing well in foster care. However, parenting time with AW was going well. The court took judicial notice of petitioner's February 1, 2013 court report and adopted its recommendation to suspend respondent's parenting time with respect to SW and ZW.

At a May 14, 2013 review hearing, Dorland recommended that the parenting time arrangement remain the same, and that SW be placed in residential care at Holy Cross in Saginaw for a behavioral modification program. Dorland recommended that SW enter residential care because she had made threats to harm her teachers and herself. The court adopted the recommendation. The court also ordered respondent to attend therapy at Bay Psychological Services with AW.

On June 26, 2013, therapist Michele Hugo wrote to DHS caseworker Kristopher Osborn about concerns she had regarding AW's experience with respondent. According to Hugo, AW showed signs of posttraumatic stress disorder (PTSD). Hugo stated that AW (three years old at

the time) exhibited aggressive and fearful behavior whenever she was exposed to “any type of external cue that reminds her of past trauma,” apparently in reference to her having witnessed respondent or AW’s Father physically abusing the older children. Hugo recommended that AW have a period of three to six months without encountering external cues that would remind her of trauma. Based on Hugo’s recommendation, the guardian ad litem moved the court to suspend parenting time between AW and respondent. The trial court found that visitation with respondent triggers a trauma reaction in AW, and ordered a suspension of parenting time for at least two months with a plan to attempt to reincorporate respondent into AW’s therapy after that. According to Hugo, AW’s play became a lot more positive during the suspension.

At the August 20, 2013 permanency planning hearing, the court received petitioner’s August 9, 2013 report. Osborn reported that the children were doing well in their placements. The court ordered that the children remain in their current placements and that reunification of the family remain the goal. The trial court ordered that parenting time between respondent and AW remain suspended “until [AW’s] counselor finds it appropriate.”

At the next review hearing, Osborn recommended that “the court consider moving forward on alternative permanency options for the children.” Osborn recommended guardianship or permanent placement with relatives for the older children. Given AW’s age, Osborn recommended that the goal for her be changed to adoption. The court changed the goal for AW to adoption, but stated that it would change the goal back to reunification if respondent showed a benefit from services over the next three months. The goal of adoption for AW was continued following a review hearing on February 4, 2014 (approximately 2 ½ months later). On February 18, 2014, petitioner filed a petition to terminate respondent’s parental rights to AW. The petition alleged that statutory grounds to terminate parental rights existed under MCL 712A.19b(3)(c)(i), (ii), (g), and (j).

The court held a three-day termination trial starting on May 27, 2014. Osborn and TBHS therapist Kortney Peppler each testified that respondent’s parenting techniques were emotionally harmful to her children, specifically that respondent rejected, ignored, verbally assaulted, and terrorized ZW. Hugo testified that although respondent was cooperative in therapy, she showed no improvement in her behavior or parenting abilities. Social worker Diane Kukulis, who conducted an attachment assessment for respondent and AW, testified that respondent had a “dismissive” parenting style that was harmful to AW, and further that respondent felt no responsibility for the sexual abuse of SW. Kukulis opined that AW would suffer trauma if returned to respondent. When asked if respondent would be able to rectify the risk of harm to AW in a reasonable amount of time, Kukulis answered, “I think it will take a while.” DHS case-worker Allison Grifhorst also opined that respondent had not shown any benefit from the parenting education she had received. Hugo testified that when reintegration of respondent into therapy with AW was attempted, AW’s behavior regressed to where it had been when she began therapy. Hugo testified that AW was very clear that the source of her trauma was a person named “Um,” which Hugo understood to be her mother. Hugo testified that respondent was unable or unwilling to fully participate in the structured play therapy, and spent time talking about her own memories rather than what was happening in the present.

Counsel for respondent called three witnesses, including respondent. TBHS therapist Michele DeCoe was respondent’s counselor for anxiety and depression. When asked if

respondent had made progress with her mental health, DeCoe responded, “I think we’re kind of at a plateau right now.” DeCoe testified as to difficulties with respondent’s “inability to comprehend some of the psychological testing and the bonding test and things of that nature, trying to assist with the comprehension there or the insight of that . . .” Parent educator Ruth Kasper testified that respondent had successfully completed a nine-session parenting course through the YWCA’s Building Strong Families program. Kasper stated that, based on a written assessment given at the end of the course, respondent had made progress in understanding some of the key concepts discussed in the class.

Respondent indicated that she thought she would be able to handle things differently if the children were returned to her, but stated that no one had given her a chance to demonstrate that she could do better. Respondent was asked if she thought it was in AW’s best interests for her parental rights to be terminated and she answered, “No . . . [b]ecause I still love her and I still want her home.” Respondent indicated that she could provide a home for AW, keep her fed and clothed, and keep her safe from harm.

The court terminated respondent’s parental rights to AW. The court provided a detailed factual and procedural history of the case. In its application of the law, the court stated that respondent’s parenting techniques caused emotional harm to AW and that this was the condition that led to the initial adjudication. The court held that more than 182 days had elapsed since the initial adjudication, and that the condition had not been rectified, i.e., respondent’s parenting had not shown improvement, and AW showed signs of emotional harm when brought into contact with respondent. The court noted that AW showed improvement only when visitation with respondent stopped, and that AW immediately regressed when Hugo attempted to reintegrate respondent into therapy. The court found that it would take at least six months to one year for AW to be reunited with her mother, and that is only if respondent were able to demonstrate a substantial benefit from parenting classes and other services. Stating that respondent had failed to show any improvement since the time of the initial petition, the court held that “the reasonable likelihood that [respondent] will rectify the conditions within a reasonable time given the age of the child is not supported by this record.”

The court then addressed the best interests of the AW. The court noted that AW was now five years old and had been in foster care since the case began in November 2012. Crediting Hugo’s, Kukulis’s, and Grifhorst’s testimony, the court concluded that termination was in AW’s best interests.

This appeal followed. Although respondent’s single question presented on appeal only addresses the issue of the court’s best-interest determination, the substance of her argument implicates the statutory grounds for termination as well. We will therefore discuss both the court’s statutory grounds and its best-interest findings and conclusions.

II. STANDARD OF REVIEW

We review for clear error a trial court’s finding that a statutory ground for termination has been proven by clear and convincing evidence, MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004), and the court’s finding that termination was in the best interests of the child, *In re Trejo*, 462 Mich 341, 364; 612 NW2d 407 (2000). “A finding of fact is clearly

erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App at 296-297.

III. STATUTORY GROUNDS FOR TERMINATION

To terminate parental rights under MCL 712A.19b, the court must find clear and convincing evidence that one of the statutory grounds for termination exists. *In re Trejo*, 462 Mich at 350.

MCL 712A.19b(3)(c)(i) states that parental rights can be terminated if

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds [that] . . . [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Respondent pleaded no contest to allegations in the petition that her parenting techniques had caused her children emotional harm. Both before and after the children were removed from respondent's custody, petitioner attempted to rectify this condition by offering respondent parenting classes and other types of counseling. Yet every DHS caseworker who testified at the termination trial opined that respondent had not benefited from parenting classes. When one therapist attempted to integrate respondent into AW's therapy, AW quickly regressed. Kukulis testified that respondent had a "dismissive" parenting style that put her at risk for abusing or neglecting her children. Even DeCoe, a witness called by respondent, described respondent's progress in addressing her mental health issues as having reached a plateau. The evidence supports the conclusion that "despite . . . time to make changes and the opportunity to take advantage of a variety of services, the conditions that originally brought [AW] into the foster care system still existed." *In re Powers*, 244 Mich App 111, 119; 624 NW2d 472 (2000).

Additionally, that respondent showed little progress, if any, supports the court's conclusion that the conditions will not be rectified within a reasonable time given AW's age. AW was five years old at termination and had been in foster care since 2012. Despite being offered "the opportunity to take advantage of a variety of services," *id.*, respondent had only shown minimal improvement in her parenting ability. It would be unreasonable, considering AW's age and the time she has already spent in foster care, to believe that respondent would become an adequate parent within a reasonable time. Accordingly, grounds for termination existed under MCL 712A.19b(3)(c)(i).

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights." MCL 712A.19b(5). "To determine whether termination of parental rights is in a child's best interests, the court should consider a wide variety of factors that may include the child's bond to the parent, the parent's parenting ability, the child's need for permanency,

stability, and finality, and the advantages of a foster home over the parent's home.” *In re White*, 303 Mich App 701, 713; 846 NW2d 61 (2014).

Regarding AW's best interests, the trial court concluded:

There is no doubt that mother loves [AW]. But, . . . love is not enough. It takes more than just love to properly parent a child. [AW] now knows this since removed from her mother. It takes more than just providing for the physical needs of a child[,] and [AW] now knows this as well. Given her age, [AW] deserves to have the proper parental comfort, parental direction, parental involvement, parental understanding. And, given mother's lack of understanding and lack of a showing of benefit (especially since mother has had services prior to the initial petition, as well as during the course of this case), this court is not satisfied that mother would change her ways for the long haul. [AW] deserves better. It is in the best interest of this child to have mother's rights terminated.

The evidence establishing the statutory ground for termination also supports the trial court's finding that a preponderance of the evidence, see *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013), supported the finding that termination was in AW's best interests. AW is doing well in foster care. Attempts to integrate respondent into AW's therapy caused AW to regress and exhibit signs of posttraumatic stress disorder. AW, already two years into foster care, has a need for permanence and stability, and respondent has not demonstrated her ability to provide that for her. Accordingly, the trial court did not clearly err in holding that termination was in AW's best interests.

Affirmed.

/s/ Michael J. Riordan

/s/ Jane M. Beckering

/s/ Mark T. Boonstra